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No. 81-2145

In the Supreme Court of the United States

OCTOBER TERM, 1982

WAYNE ARRANDALE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the evidence at trial established multiple conspiracies rather than the single conspiracy charged in the indictment.

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction	1
Statement	1
Argument	3
Conclusion	6

TABLE OF AUTHORITIES

Cases:

Glasser v. *United States*, 315 U.S. 60 3

Kotteakos v. *United States*, 328 U.S. 750 ..... 3, 4

United States v. *Bertolotti*, 529 F. 2d 149 ..... 3, 5

United States v. *Gantt*, 617 F. 2d 831 4

United States v. *Grassi*, 616 F. 2d 1295, cert. denied, 449 U.S. 956 3

Statutes:

21 U.S.C. 846 1

21 U.S.C. 963 1

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OPINION BELOW

The judgment order of the court of appeals (Pet. App. B-1 to B-2) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 12, 1982 (Pet. App. B-1). The petition for a writ of certiorari was filed on May 17, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted of conspiracy to import and distribute marijuana in violation of 21 U.S.C. 846 and 963.[1] He was sentenced to

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[1]The indictment named 18 others as co-conspirators. Petitioner's case was severed from that of his co-conspirators and he was tried alone.

two years' imprisonment and a fine of $15,000. The court of appeals affirmed (Pet. App. B-1 to B-2).

1. The evidence at trial showed that from approximately December 1975 until the fall of 1979, Thomas Long organized, supervised and managed the importation and distribution of multiple-ton shipments of marijuana. Long operated out of Alabama and Florida and imported the marijuana from Colombia, South America. His principal customers were three distributors from Western Pennsylvania—petitioner and petitioner's two brothers, Glen and Brian. Long employed pilots and couriers who shuttled large volumes of marijuana and cash between him and his customers (see, *e.g.*, C.A. App. 33-45, 60-71, 76, 226-242, 272-274, 442-447).[2]

In the spring of 1978, petitioner and his brothers paid Long $80,000 for marijuana they had previously purchased. Shortly thereafter, petitioner bought marijuana from Long on credit at an agreed price of two million dollars. On several occasions petitioner came to Long's home in Florida to make $100,000 payments on this purchase. Worried that he would not be paid in full, Long sent one of his couriers, Gary Bauer, and his pilot to Long Island to collect another $100,000 from petitioner in August 1978. Petitioner made the payment but complained that he was dissatisfied with the quality of some of the marijuana. The following day, petitioner's brother Glen returned the low-grade marijuana to Bauer and the pilot. Long sent another of his couriers to pick up the marijuana in order to transport it to one of his customers in Western Pennsylvania. Soon thereafter, Bauer flew to San Diego to meet again with petitioner to obtain yet another $100,000 payment. Bauer was unsuccessful on this trip, but when he needed money to return to Florida,

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[2] "C.A. App." refers to the appendix filed in the court of appeals, in which the trial transcript was reproduced.

petitioner made the necessary arrangements at Long's request (C.A. App. 275-302).[3]

ARGUMENT

Relying on *Kotteakos* v. *United States*, 328 U.S. 750 (1946), and *United States* v. *Bertolotti*, 529 F. 2d 149, 156 (2d Cir. 1975), petitioner contends (Pet. 5-9) that the government's evidence at trial established multiple conspiracies, resulting in a material variance from the single general conspiracy charged in the indictment. The courts below correctly rejected this fact-bound claim, and the issue does not warrant further review by this Court.

When viewed in the light most favorable to the prosecution, *Glasser* v. *United States*, 315 U.S. 60, 80 (1942), the evidence in this case amply demonstrates a single drug importation and distribution conspiracy. Some participants in the conspiracy were importers, some were couriers and pilots, and some—like petitioner—were wholesalers and retailers. As with most narcotics sale and distribution conspiracies, not all the conspirators participated in each and every incident that led to the success of the venture. But, as the Fifth Circuit has stated (*United States* v. *Grassi*, 616 F. 2d 1295, 1303, cert. denied, 449 U.S. 956 (1980)):

> It is not crucial to the existence of a conspiracy that each conspirator participate in every phase of the criminal venture. *Blumenthal* v. *United States*, 332 U.S. 539, 68 S. Ct. 248, 92 L. Ed. 154 (1947). Nor is it necessary for each conspirator to have knowledge of the identity and role of each of his coconspirators. *Id.* The unity essential to a conspiracy is derived from the assent of its members to contribute to a common enterprise.

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[3]The evidence also showed that petitioner and his brothers owned small boats that they used to off-load marijuana from larger vessels (C.A. App. 279-280).

Thus, petitioner need not have known the identity of Long's Colombian sources, his pilots, or his couriers.[4] However, having purchased over two million dollars worth of marijuana from Long, petitioner certainly knew that these participants existed. And whether or not petitioner knew Long's other "chief lieutenants" or primary distributors, the evidence showed a nexus among them. For instance, one Pennsylvania distributor agreed to take the marijuana that petitioner had rejected as inferior. The evidence therefore demonstrated that petitioner, a large-scale wholesaler of marijuana, was a willing participant in a single criminal venture.

Accordingly, this case is readily distinguishable from *Kotteakos* v. *United States, supra*. There, 32 defendants were indicted for a single general conspiracy to violate the National Housing Act. The evidence at trial, however, showed the existence of at least eight conspiracies involving several defendants whose only connection with each other was that one individual handled all of their fraudulent applications. The Court likened the conspiracy to a wheel with a hub and spokes, but no rim. 328 U.S. at 755. Here, in contrast, the various distributors, such as petitioner, were not only connected by Long, but also by his couriers and by the exchange of marijuana among them. The evidence, moreover, showed a chain-type conspiracy rather than the wheel-type exemplified by *Kotteakos*. The marijuana passed from the Colombian source, through Long and his couriers, and on to petitioner and a few other wholesalers. See *United States* v. *Gantt*, 617 F. 2d 831, 846 (D.C. Cir. 1980).

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[4]Contrary to petitioner's assertion that the only co-conspirator he knew was Long (Pet. 8), he traveled and stayed with pilot Charles Stalnaker on Long Island and had numerous meetings with Gary Bauer (C.A. App. 287-294).

United States v. *Bertolotti, supra*, likewise does not aid petitioner. There, the Second Circuit held that, although the indictment charged one overall conspiracy, the evidence clearly showed multiple conspiracies. The court observed that there were 60 indicted and unindicted conspirators involved in "at least four separate conspiracies" that were only tenuously related to each other.[5] 529 F. 2d at 156. The defendants in *Bertolotti* were subjected to an almost four-week trial involving voluminous testimony relating to "unconnected crimes" in which they took no part. *Id.* at 157. The court found clear evidence of prejudice from the fact that the defendants were tried "en masse" for distinct and separate offenses committed by others. *Ibid.*

Unlike the defendants in *Bertolotti*, petitioner was tried alone in a single week, and only evidence demonstrating the overall scope of the conspiracy and petitioner's role in it was introduced against him. He was not tried "en masse" for separate offenses committed by others in the course of the importation and distribution conspiracy. Petitioner's role in the conspiracy, moreover, was extensive. Petitioner's dealings with Long resulted in a $2 million debt for marijuana received. Petitioner met with Long in Florida several times to make $100,000 payments on this debt (C.A. App. 280). Another $100,000 payment was made by petitioner to Bauer in the middle of the night in a motel room in Long Island (*id.* at 293-298). During that meeting, petitioner made arrangements for the return and ultimate resale of inferior marijuana (*id.* at 299). These activities evidence a deep involvement in a single conspiracy to import and distribute marijuana. Petitioner was dealing in large quantities of marijuana and money and was knowledgeable about

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[5]The court spoke of one conspiracy as involving "no more than a cash theft." 529 F. 2d at 156.

the quality of the drug. In short, petitioner's involvement in a major narcotics business cannot be characterized as "minor." See Pet. 7.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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